IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.21 OF 2005

IN

COMPANY PETITION NO.353 OF 2003

In the matter of the Companies Act 1 of 1956;

and

In the matter of Solid Carbide Tools Limited (In prov.liquidation)

NIGG Automation AG .. Petitioner

Sham Sadhuram Gandhi .. Applicant

Mr.S.S.Gandhi Applicant in person

Ms.Ketki Gandhi i/b Wadia Ghandhy for NIGG Automation

Mr B.B.Dholkia for Engi. Workers Asso.

Ms Gautam Dy.O.L. present

CORAM : A.M.KHANWILKAR, J

DATE: 20th October, 2005

P.C.

1. This application has been filed by Mr. Sham Sadhuram Gandhi claiming to be the creditor of the company for approving the compromise/arrangement between the company and the creditors of the company.

2. The company was ordered to be wound up in terms of order passed by this Court dated 15th January, 2004 in Company Petition No. 353 of 2003 as well as dated 16th July, 2004 in Company Petition No.14 of 1998 respectively. According to the applicant, the affairs of the company were mismanaged by the then Director and Chairman of the Company Mr. Mukesh Kothari and his family members. As a matter of fact the said Mr.Kothari had resigned as Director with effect from 30th November, 1995 but still continued to remain in-charge of the affairs of the company. It is also stated that the said Mr.Mukesh Kothari is facing criminal prosecution and is a proclaimed offender since the year 2001 by the concerned criminal Court.

3. Alongwith the present application, statement of

other creditors (secured as well as unsecured) have been filed who have consented for the proposed scheme. Around over 95 % of the creditors are in favour of the proposed scheme of compromise/ arrangement. The financial institutions have also supported the scheme. Ordinarily, in view of these developments, the application ought to succeed. However, this application is resisted by the Official Liquidator pointing out that the applicant is not an acknowledged creditor of the company. This objection is devoid of any merits. I am in agreement with the submission canvassed by the applicant for the record clearly indicates that the applicant had pledged his personal fixed deposits to the Union Bank of India for advances to be made to the company (Solid Carbide Tools Ltd). The bank invoked the said deposits for adjusting the outstanding claim against the company, which position is fortified from the communication dated 27th August, 2001 and 22nd September, 2003 respectively. As the fixed deposits were pledged by the applicant for the benefit of the company and the financial institutions in turn have invoked the said fixed deposits, the amount was paid from the account of the applicant for settling the dues of

the company. In such a situation, the applicant will have to be treated as a contingent or prospective creditor though not an acknowledged creditor. There is nothing in the Act, atleast brought to my notice, which prevents the contingent creditor from taking recourse to remedy of scheme compromise/arrangement.

4. In the circumstances, the only objection which has been pressed into service on behalf of the Official Liquidator will have to be negatived.

5. In so far as prayer in terms of clause (a) is concerned, as over 95 % of the creditors of the company have consented to the proposed scheme of compromise/arrangement I see no difficulty in acceeding to the said prayer.

6. In so far as prayer (b) is concerned, for dispensing of the meeting of the share holders of the company, I find substance in the argument of the applicant that as no records of the company are available it is not possible to ascertain the details of the shareholders of the company. As the records of the company are unavailable the Official

Liquidator by my previous order was called upon to issue notice to the creditors which notice has been issued. Pursuant to the said notice, only the Commissioner for Provident Fund has appeared before the Court. In my opinion, as over 95 % of the creditors have consented for the proposed scheme, it will be appropriate to accept the said scheme. As mentioned earlier, as the records of the company are not available, it will not be possible to convene a meeting of the share holders of the company. In any case, the proposed scheme is not to the prejudice of the shareholders. On the contrary if the company is revived the shareholders are bound to benefit. Accordingly, even relief in terms of prayer (b) will have to be granted.

7. In so far as reliefs in terms of prayer clauses (d) and (e) are concerned, I find substance in the stand taken on behalf of the applicant that Mr Mukesh Kothari and his family members were solely responsible for the situation in which company has eventually landed, resulting in passing of order of winding up of the company. Besides, the said Mr Kothari is absconding since 2001. In this view of the matter, it will be in the fitness of things to

restrain Mr. Mukesh Kothari and his family members from interfering in the working of the company or with the administration of the company in any manner or to deal with the shares of the company without the prior permission of this Court. Accordingly, relief in terms of prayer clauses (d) and (e) will have to be granted in above terms.

8. In so far as relief in terms of prayer clause (f) is concerned, in the peculiar facts of the present case as the new management will have to start afresh and reconstruct the record, it will be appropriate to grant relief in terms of prayer clause (f) so as to facilitate the new management to conduct the business in a smooth manner so as to accomplish the scheme of compromise/arrangement.

9. In so far as relief in terms of prayer clauses (g) to (i) are concerned, the applicant fairly states that these reliefs are worked out and it will not be necessary to press this relief for the present. Accordingly, no orders are passed for reliefs in terms of prayer clauses (g) to (i).

10. For the aforesaid reasons, Company Application

is made absolute in terms of prayer clauses (a) to (e). It is made clear that Mr. Mukesh Kothari and his family members shall not deal with the shares of the company unless prior permission of this court is obtained.

11. At this stage, representative of the Official Liquidator has brought to my notice that there are outstanding bills of security agents which will have to be paid. I have already considered such a request in my order dated 1st July, 2005. The outstanding bills of M/s Guardian Facilities Ltd shall be kept in abeyance till the investigation in respect of theft of movables lying in the premises which were in sealed condition, is completed.

A.M.Khanwilkar, J